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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,003

07/30/2003

Scott F. Watson

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DISNEY ENTERPRISES

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EXAMINER

MONTOYA, OSCHTA I

ART UNIT

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2421

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/632,003	<b>Applicant(s)</b> WATSON ET AL.	
	<b>Examiner</b> Oshta Montoya	<b>Art Unit</b> 2421	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 48-50,52-58,60-67 and 69-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48-50,52-58,60-67 and 69-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 48-50, 52-58, 60-67 and 69-73 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues (page 11, lines 3-7) that Arsenault describes a method of real-time viewing of a program for video on demand and that the present application is trying to overcome the shortcomings of real-time video buffering and displaying. To this matter the examiner respectfully disagrees in that real time video on demand is only one aspect of Arsenault's invention. Arsenault very clearly discloses "the present invention also provides non-real time viewing capabilities to the viewer. This non-real time viewing capability includes the ability to store a video program in its entirety for complete off-line viewing at a later date" (col. 9, lines 46-50).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 48-50, 54, 57-58, 62, 65-67 and 71 rejected under 35 U.S.C. 103(a) as being unpatentable over Arsenault et al., US 6,701,528 in view of Li, US 7,047,307.

Regarding claim 48, Arsenault discloses a method of obtaining media assets by

a user device over a network, the method comprising:

receiving an asset list, including information about the media assets, over the network (col. 7, lines 29-40, col. 16, lines 6-12);

storing the asset list, including the information about the media assets, in a memory (col. 7, lines 29-40, col. 16, lines 6-12);

sending a request to a remote server for a delivery of the media assets to the user device over the network, wherein the request is based on a selection of media assets from the asset list based on the information about the plurality of media assets stored in the memory (702 figure 7, col. 11, lines 25-27, 904 figure 9, col. 16, lines 22-25);

downloading the media assets to the user device, periodically (figure 6, col. 11, lines 8-22, col. 16, lines 41-49); and

providing an uninterrupted and continuous stream of the media assets for viewing by a user without requiring a real-time buffering (col. 9, lines 45-50).

Although, Arsenault discloses downloading the selection in the middle of the night when there is more bandwidth available (col. 16, lines 45-47); Arsenault is silent about downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met, wherein the one or more constraints include at least one of a usage level of the user device, a usage level of the network and a service quality level of the network .

In an analogous art, Li discloses downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met, wherein the one or more constraints include at least one of a usage level of the

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user device, a usage level of the network and a service quality level of the network (col. 1, lines 60 to col. 2, line 9, col. 4, lines 23-29 and 56-60, col. 6, lines 28-35).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Arsenault's method with the teachings of Li. The motivation would have been to distribute the load of the server throughout the network in order to have a decentralized network.

Regarding claim 49, Arsenault and Li disclose the method of claim 48, wherein the selection is made by the user (Arsenault 706 figure 7, col. 11, lines 45-47).

Claim 66 is rejected on the same grounds as claim 49.

Regarding claim 50, Arsenault and Li disclose the method of claim 48, wherein the one or more constraints include a bandwidth availability of the network (Li col. 6, lines 28-35).

Claims 58 and 67 are rejected on the same grounds as claim 50.

Regarding claim 54, Arsenault and Li disclose the method of claim 48, wherein the one or more constraints include a level of activity of the network (Arsenault col. 16, lines 45-49).

Claims 62 and 71 are rejected on the same grounds as claim 54.

Regarding claim 57, Arsenault discloses a method of delivering media assets selected from an asset list supplied to a user device over a network, the asset list including information about the media assets (col. 7, lines 29-40, col. 16, lines 6-12), the method comprising:

receiving a request, based on the information, for a delivery of the media assets to the user device (702 figure 7, col. 11, lines 25-27, 904 figure 9, col. 16, lines 22-25); and

delivering the media assets to the user device periodically (figure 6, col. 11, lines 8-22, col. 16, lines 41-49); and

whereby the media assets can be made viewable by a user device to a user by providing an uninterrupted and continuous stream of the media assets without requiring a real-time buffering (col. 9, lines 45-50).

Although, Arsenault discloses downloading the selection in the middle of the night when there is more bandwidth available (col. 16, lines 45-47); Arsenault is silent about downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met, wherein the one or more constraints include at least one of a usage level of the user device, a usage level of the network and a service quality level of the network .

In an analogous art, Li discloses downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met, wherein the one or more constraints include at least one of a usage level of the

user device, a usage level of the network and a service quality level of the network (col. 1, lines 60 to col. 2, line 9, col. 4, lines 23-29 and 56-60, col. 6, lines 28-35).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Arsenault's method with the teachings of Li. The motivation would have been to distribute the load of the server throughout the network in order to have a decentralized network.

Regarding claim 65, Arsenault discloses a user device for obtaining media assets over a network and displaying the media assets to a user, the user device comprising:

- a memory (232 figure 2); and

- a CPU (210 figure 2) configured to

- receive an asset list, including information about media assets, over the network (col. 7, lines 29-40, col. 16, lines 29-40);

- store the asset list, including the information about the media assets, in the memory (col. 7, lines 29-40, col. 16, lines 6-12);

- send a request to a remote server for a delivery of the media assets to the user device over the network, wherein the request is based on a selection of the media assets from the asset list based on the information about the media assets stored in the memory (702 figure 7, col. 11, lines 25-27, 904 figure 9, col. 16, lines 22-25);

- download the media assets to the user device, periodically (figure 6, col. 11, lines 8-22, col. 16, lines 41-49); and

provide an uninterrupted and continuous stream of the media assets for viewing by a user without requiring a real-time buffering (col. 9, lines 45-50).

Although, Arsenault discloses downloading the selection in the middle of the night when there is more bandwidth available (col. 16, lines 45-47); Arsenault is silent about downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met, wherein the one or more constraints include at least one of a usage level of the user device, a usage level of the network and a service quality level of the network .

In an analogous art, Li discloses downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met, wherein the one or more constraints include at least one of a usage level of the user device, a usage level of the network and a service quality level of the network (col. 1, lines 60 to col. 2, line 9, col. 4, lines 23-29 and 56-60, col. 6, lines 28-35).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Arsenault's device with the teachings of Li. The motivation would have been to distribute the load of the server throughout the network in order to have a decentralized network.

4. Claims 52, 60, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arsenault in view of Li in view of Son et al., US 7,159,235.

Regarding claim 52, Arsenault and Li disclose the method of claim 48.

Arsenault and Li are silent about the one or more constraints include an assured quality of service.



In an analogous art, Son discloses the one or more constraints include an assured quality of service (col. 10, line 66 to col. 11, line 10).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Arsenault and Li's method with the teachings of Son. The motivation would have been to give the user the best possible service in order to keep the users satisfied and be able to maintain their business.

Claims 60 and 69 are rejected on the same grounds as claim 52.

5. Claims 53, 61, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arsenault in view of Li in view of Nawaz et al., US 5,959,621.

Regarding claim 53, Arsenault and Li disclose the method of claim 48.

Arsenault and Li are silent about the one or more constraints include the user device being idle.

In an analogous art, Nawaz discloses the one or more constraints include the user device being idle (col. 9, lines 7-9).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Arsenault and Li's method with the teachings of Nawaz. The motivation would have been to be able to download the data when the receiver is at a low usage performance in order to keep the applications running smoothly when the users are using the receiver.

Claims 61 and 70 are rejected on the same grounds as claim 53.

6. Claims 55, 63, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arsenault in view of Li in view of Ueda, US 5,815,194.

Regarding claim 55, Arsenault and Li disclose the method of claim 48.

Arsenault and Li are silent about the one or more constraints include a level of memory usage of the user device.

In an analogous art, Ueda discloses the one or more constraints include a level of memory usage of the user device (col. 3, lines 26-34).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Arsenault and Li's method with the teachings of Ueda. The motivation would have been to be able to give the user the greater number of desired programs.

Claims 63 and 72 are rejected on the same grounds as claim 55.

7. Claims 56, 64 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arsenault in view of Li in view of Needham et al., US 2003/0177495.

Regarding claim 56, Arsenault and Li disclose the method of claim 48.

Arsenault and Li are silent about the one or more constraints include a level of CPU usage of the user device.

In an analogous art, Needham discloses the one or more constraints include a level of CPU usage of the user device (paragraph 20).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Arsenault and Li's method with the teachings of Needham. The motivation would have been to be able to download the data when the receiver is at a low usage performance in order to keep the applications running smoothly when the users are using the receiver.

Claims 64 and 73 are rejected on the same grounds as claim 56.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Oshta Montoya whose telephone number is (571)270-1192. The examiner can normally be reached on Monday/Friday 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/  
Supervisory Patent Examiner, Art Unit 2421

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